

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WARREN GARDNER, et al., Individually and) Case No. 3:19-cv-02561-WHO
on Behalf of All Others Similarly Situated,)
Plaintiffs,) CLASS ACTION
vs.)
STARKIST CO., a Delaware company,) **[PROPOSED] REQUEST FOR
INTERNATIONAL JUDICIAL
ASSISTANCE (LETTER ROGATORY)
RE: DONGWON INDUSTRIES CO. LTD.**
Defendant.)
_____)

1 The United States District Court for the Northern District of California, the Honorable
2 William H. Orrick Jr., United States District Judge, presents its compliments to the Appropriate
3 Judicial Authority of the Republic of Korea, Director of International Affairs, National Court
4 Administration, Seocho-daero 219, Seocho-gu, SEOUL 137-750, Republic of Korea, and requests
5 international judicial assistance to obtain evidence to be used at trial in a civil lawsuit before this
6 Court in the above-captioned matter. Based on Plaintiffs' allegations, this Court finds that there
7 are sufficient grounds to obtain documentary evidence from Dongwon Industries Co. Ltd.
8 ("Dongwon") in the above-captioned action, and should be produced in the interests of justice.

9 This Letter of Request is made pursuant to, and in conformity with, Chapter 1 of the *Hague*
10 *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Criminal Matters*,
11 *opened for signature* March 18, 29780, 847 U.N.T.S. 241 ("Hague Convention"), to which both
12 the United States and Korea are parties.

13 Based on Plaintiffs' allegations and the evidence produced to date in the case through
14 discovery, this Court finds there are sufficient grounds to obtain documentary evidence sought
15 through this Letter of Request, attached hereto as **Attachment A**, which may be highly relevant to
16 the issues in dispute. This Letter of Request fully complies with the reservations under the Hague
17 Convention by Korea.

18 The particulars of this Letter of Request are as follows:

19 **SECTION I**

20 1. **Sender:**

21 Stuart A. Davidson
22 ROBBINS GELLER RUDMAN & DOWD LLP
120 East Palmetto Park Road, Suite 500
23 Boca Raton, Florida 33432
Telephone: 561/750-3000
24 Email: sdavidson@rgrdlaw.com

25 As Authorized by:

26 Honorable William H. Orrick Jr., United States District Judge
United States District Court for the Northern District of California
27 Phillip Burton Federal Building & United States Courthouse
450 Golden Gate Avenue, Courtroom 2, 17th Floor
San Francisco, CA 94102
28 USA

1 **2. Central Authority of Requested State:**

2 Director of International Affairs
3 National Court Administration
4 Seocho-daero 219
5 Seocho-gu
6 SEOUL 137-750
7 Republic of Korea

8 **3. Person to Whom the Executed Request Is to Be Returned:**

9 Stuart A. Davidson
10 ROBBINS GELLER RUDMAN & DOWD LLP
11 120 East Palmetto Park Road, Suite 500
12 Boca Raton, Florida 33432
13 Telephone: 561/750-3000
14 Email: sdavidson@rgrdlaw.com

15 **4. Specification of Date by Which the Requesting Authority Requires Receipt of the**
16 **Response to the Letter of Request**

17 The requesting authority respectfully requests that the response be provided as soon as
18 practicable in order to ensure that evidence may be obtained before May 1, 2021.

19 **SECTION II**

20 In conformity with Article 3 of the Hague Convention, the undersigned applicant has the
21 honor to submit the following request:

22 **5. Article 3(a): Judicial Authorities and Case Information**

23 **a. Requesting Judicial Authority**

24 Honorable William H. Orrick Jr., United States District Judge
25 United States District Court for the Northern District of California
26 Phillip Burton Federal Building & United States Courthouse
27 450 Golden Gate Avenue, Courtroom 2, 17th Floor
28 San Francisco, CA 94102
29 USA

30 **b. To the Competent Authority in Korea**

31 Director of International Affairs
32 National Court Administration
33 Seocho-daero 219
34 Seocho-gu
35 SEOUL 137-750
36 Republic of Korea

37 **c. Name of the Case and Any Identifying Number**

38 *Gardner v. StarKist Co.*, No. 3:19-cv-02561-WHO, United States District Court
39 for the Northern District of California

1 **6. Article 3(b): Names and Addresses of the Parties and Their Representatives of the**
2 **Case**

3 a. **Plaintiffs**

4 Plaintiffs Warren Gardner, Lori Myers, Angela Cosgrove, Autumn Hessong, Robert
5 McQuade, Colleen McQuade, James Borruso, Fidel Jamelo, Jocelyn Jamelo, Anthony Luciano,
6 Lori Luciano, Robert Nugent, Avraham Isac Zelig, Ken Petrovcik, Megan Kiihne, Kathleen Miller,
7 Tara Trojano, Jason Petrin, Amy Taylor, Heather Meyers, and Rachel Pedraza ("Plaintiffs")

8 *Represented by:*

9 Stuart A. Davidson
10 Christopher C. Gold
11 Dorothy P. Antullis
12 Bradley M. Beall
13 ROBBINS GELLER RUDMAN & DOWD LLP
14 120 East Palmetto Park Road, Suite 500
15 Boca Raton, Florida 33432
16 Telephone: 561/750-3000
17 Email: sdavidson@rgrdlaw.com
18 cgold@rgrdlaw.com
19 dantullis@rgrdlaw.com;
20 bbeall@rgrdlaw.com

21 Elaine A. Ryan
22 Carrie A. Laliberte
23 BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.
24 2325 East Camelback Road, Suite 300
25 Phoenix, AZ 85016
26 Telephone: 602/274-1100
27 Email: eryan@bffb.com
28 claliberte@bffb.com

29 Patricia N. Syverson
30 BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.
31 600 West Broadway, Suite 900
32 San Diego, CA 92101
33 Telephone: 619/756-7748
34 Email: psyverson@bffb.com

35 Brian Douglas Penny
36 GOLDMAN SCARLATO & PENNY, P.C.
37 8 Tower Bridge, Suite 1025
38 161 Washington Street
39 Conshohocken, PA 19428
40 Telephone: 484/342-0700
41 Email: penny@lawgsp.com

42 Brian M. Brown
43 ZAREMBA BROWN PLLC
44 40 Wall Street, 52nd Floor
45 New York, NY 10005
46 Telephone: 212/380-6700
47 Email: bbrown@zarembabrown.com

b. Defendant

The Defendant is StarKist Co.

Represented by:

Roxane A. Polidora
Lee Brand
PILLSBURY WINTHROP SHAW PITTMAN LLP
Four Embarcadero Center
Twenty-Second Floor
San Francisco, CA 94111-5998
Telephone: 415/983-1116
Email: roxane.polidora@pillsburylaw.com
lee.brand@pillsburylaw.com

7. Article 3(c): Nature and Purpose of the Proceedings and Summary of the Facts

a. Nature and Purpose of the Claims

11 The Plaintiffs in this civil lawsuit filed a complaint against StarKist Co. (“StarKist”) and
12 StarKist’s parent company, Dongwon Industries Co. Ltd. (“Dongwon”), on May 13, 2019. As
13 more fully explained below, Plaintiffs’ claims concern StarKist’s alleged false advertising of its
14 tuna products as “Dolphin Safe.” The lawsuit is brought as a putative class action, meaning that
15 Plaintiffs seek to represent not only themselves in the lawsuit, but also as representatives of all
16 consumers in the United States who purchased StarKist’s tuna products. On March 31, 2020, the
17 Court upheld Plaintiffs’ claims against StarKist, but dismissed Plaintiffs’ claims against Dongwon.

Plaintiffs' Allegations

i. **Plaintiffs' Claims Generally**

20 Plaintiffs' claims concern StarKist's "Dolphin Safe" policy with respect to its canned and
21 pouched tuna products for the last 30 years. That policy includes a special "Dolphin Safe" logo
22 stamped on every can or pouch of tuna StarKist sells in the United States. According to StarKist,
23 its "Dolphin Safe" policy – including its logo – means that there has been "no harm to dolphins"
24 in the fishing for StarKist tuna. Said another way, StarKist claims that its tuna is "100% dolphin
25 safe." However, Plaintiffs allege that, unbeknownst to consumers, StarKist's tuna are captured,
26 including by fleets of Dongwon's fishing vessels, using fishing methods that are known to kill or
27 harm dolphins, including purse seine nets, fish-aggregating devices ("FADs"), and longlines.

1 Plaintiffs' lawsuit alleges that StarKist falsely advertised its tuna products as "Dolphin
 2 Safe" because the tuna in its products was caught by fishing methods, including those employed
 3 by Dongwon, that are known to harm or kill substantial numbers of dolphins every year. As such,
 4 Plaintiffs seek to enjoin StarKist from falsely advertising its tuna products as dolphin-safe, for
 5 restitution, and for damages.

6 **ii. Plaintiffs' Claims as They Relate to Dongwon**

7 Dongwon is a company incorporated and headquartered in the Republic of Korea
 8 ("Korea"). Dongwon claims to be the "World's No. 1 seafood company"¹ and, since its
 9 establishment, "has been leading Korea's fishing industry, sailing across the five oceans, and
 10 contributing to the development of food culture by providing high-quality seafood products."²
 11 Dongwon is the parent company of StarKist.³ Dongwon "operates 42 vessels, including the
 12 world's largest purse seine fleet."⁴ As such, Dongwon supplies some of its caught raw tuna to
 13 StarKist for use in StarKist's tuna products sold to American consumers.

14 Dongwon possesses documents and information directly relevant to Plaintiffs' claim that
 15 StarKist's "Dolphin Safe" representation is false and misleading because StarKist's tuna is caught
 16 using Dongwon's fishing methods that are known to harm or kill dolphins. First, as StarKist's
 17 parent, Dongwon is the principal fishing company that supplies StarKist's tuna. Thus, Dongwon
 18 has documents demonstrating the precise types of fishing methods used to capture StarKist's tuna.
 19 Second, according to StarKist, Dongwon "operates . . . the world's largest purse seine fleet"⁵ and
 20 "that purse seine fishing vessels using Traditional FADs supplied some of the tuna in StarKist
 21 branded Products sold in the United States during the period from May 13, 2015 to September 25,

22
 23 ¹ See Dongwon Industries, *Who We Are*, <https://www.dongwon.com/en/business/dongwon-industries> (last visited Nov. 20, 2020).

24 ² *Id.*

25 ³ See About StarKist Co., <https://starkist.com/about-starkist> (last visited Nov. 3, 2020) ("StarKist Co. is a direct wholly owned subsidiary of Dongwon Industries Co., Ltd.").

26 ⁴ *Id.*

27 ⁵ *Id.*

1 2020.”⁶ Third, StarKist told Plaintiffs that any “Documents and Communications relating to any
 2 harm or killing, whether intentional or unintentional, of dolphins by any fishing by [StarKist’s]
 3 fishing fleet, or any boat in which [StarKist] or [its] owners have any financial interest” were in
 4 the possession of Dongwon.⁷

5 Thus, Dongwon possesses information directly relevant to this litigation, including: (a)
 6 Dongwon’s procurement of raw tuna for Starkist; (b) Dongwon’s use of fishing methods such as
 7 purse seine nets, FADs, and longlines to capture tuna for StarKist; and (c) dolphin harm or deaths
 8 during Dongwon’s capture of tuna.

9 **8. Evidence to be Obtained and Purpose**

10 Pursuant to the Hague Convention, this Court requests that the appropriate judicial
 11 authority in Korea compel Dongwon to produce the documentary evidence described in
 12 Attachment A. Dongwon is located in Korea, and the documentary evidence to be examined is
 13 located outside of the United States.

14 Plaintiffs seek from Dongwon authenticated copies of the documents identified in
 15 Attachment A alleged to be relevant to the claims alleged in the above-captioned action. While
 16 this Court expresses no view as to the merits of the action or any related motions in the action,
 17 based on Plaintiffs’ representations, it believes that the documentary evidence sought here is
 18 relevant and probative of material facts for trial in the action, and that production of this
 19 documentary evidence may advance the interests of justice.

20 It is respectfully requested that the competent judicial authority of Korea compel Dongwon
 21 to produce copies of the documents that are identified in Attachment A.

22 If any portion of this Letter of Request is deemed unacceptable under the laws of Korea,
 23 please disregard that portion and continue to comply with as much of the Letter of Request as is
 24 legally permissible.

25 _____
 26 ⁶ StarKist Co.’s Responses and Objections to Plaintiffs’ Revised First Set of Requests for
 27 Admission at 8.

28 ⁷ StarKist Co.’s Responses and Objections to Plaintiffs’ Revised First Set of Requests for
 29 Production of Documents at 13.

1 **9. Article 3(e): Identity and Address of the Person Subject to the Letter of Request**

2 Dongwon Industries Co. Ltd.
3 Dongwon Industries Building
4 68 Mabang-ro Seocho-gu Seoul
5 06775 Korea, Republic of (South)

6 **10. Article 3(f): Statement of the Subject Matter About Which the Person Will be
7 Examined**

8 None.

9 **11. Article 3(g): Documents and Other Evidence to be Examined**

10 See Attachment A.

11 **12. Article 3(h): Requirement That the Evidence Be Given on Oath or Affirmation**

12 None.

13 **13. Article 3(i): Special Procedures or Methods to be Followed**

14 See Attachment A.

15 **14. Article 7: Request for Notification of the Time and Place for the Execution of the
16 Request and Identity and Address of Any Person to be Notified**

17 Please send notice of the time and place for execution of this Letter of Request to:

18 Clerk of the United States District Court for the Northern District of California
19 Phillip Burton Federal Building & United States Courthouse
20 450 Golden Gate Avenue
21 San Francisco, CA 94102
22 USA

23 -and-

24 Stuart A. Davidson
25 ROBBINS GELLER RUDMAN & DOWD LLP
26 120 East Palmetto Park Road, Suite 500
27 Boca Raton, Florida 33432
28 Telephone: 561/750-3000
29 Email: sdavidson@rgrdlaw.com

30 **15. Article 8: Request for Attendance or Participation of Judicial Personnel of the
31 Requesting Authority at the Execution of the Letter of Request**

32 None.

33 **16. Article 11: Specification of Privilege or Duty to Refuse to Give Evidence Under
34 the Law of the State of Origin**

Under the laws of the United States, a witness has a privilege to refuse to give evidence if to do so would disclose a confidential communication between the witness and her attorney specifically for the purpose of obtaining legal advice, and which privilege has not been waived. United States law also recognizes a privilege against criminal self-incrimination. Other limited privileges on grounds inapplicable here also exist, such as communications between doctors and patients, husband and wife, and clergy, and penitent. Certain limited immunities are also recognized outside the strict definition of privilege, such as the limited protection of work product created by attorneys during or in anticipation of litigation, unless that privilege has been waived.

17. Article 14: Reimbursement

10 The fees and costs incurred in the execution of this Letter of Request that are reimbursable
11 under the second paragraph of Article 14 or under Article 26 of the Hague Convention will be
12 borne by the Plaintiffs.

CONCLUSION

14 This Court, in the spirit of comity and reciprocity, hereby requests international judicial
15 assistance in the form of this Letter of Request seeking information, documents, and things
16 described herein from the National Court Administration, for the attention of the Director of
17 International Affairs. This Court extends to all judicial and other authorities of Korea the
18 assurances of its highest consideration.

19 This Court expresses its sincere willingness to provide similar assistance to the courts of
20 the Republic of Korea if future circumstances require.

22 DATE OF REQUEST:

23 | SIGNATURE AND SEAL OF THE REQUESTING AUTHORITY (Affix seal here):

25 HONORABLE WILLIAM H. ORRICK JR.
26 UNITED STATES DISTRICT JUDGE
27 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO, CALIFORNIA, UNITED STATES OF AMERICA